



## **PENSION BENEFIT GUARANTY CORPORATION**

### **29 CFR Parts 4071 and 4302**

#### **RIN 1212-AB45**

#### **Adjustment of Civil Penalties for Inflation**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

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**SUMMARY:** The Pension Benefit Guaranty Corporation is required to amend its regulations annually to adjust for inflation the maximum civil penalty for failure to provide certain notices or other material information and for failure to provide certain multiemployer plan notices.

**DATES:** *Effective date:* This rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

*Applicability date:* The increases in the civil monetary penalties under sections 4071 and 4302 of the Employee Retirement Income Security Act provided for in this rule apply to such penalties assessed after [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Summary**

##### *Purpose of the Regulatory Action*

This rule is needed to carry out the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance M-

23-05. The rule adjusts, as required for 2023, the maximum civil penalties under 29 CFR parts 4071 and 4302 that the Pension Benefit Guaranty Corporation (PBGC) may assess for failure to provide certain notices or other material information and certain multiemployer plan notices.

PBGC's legal authority for this action comes from the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and from sections 4002(b)(3), 4071, and 4302 of the Employee Retirement Income Security Act of 1974 (ERISA).

### *Major Provisions of the Regulatory Action*

This rule adjusts as required by law the maximum civil penalties that PBGC may assess under sections 4071 and 4302 of ERISA. The new maximum amounts are \$2,586 for section 4071 penalties and \$345 for section 4302 penalties.

### **Background**

PBGC administers title IV of ERISA. Title IV has two provisions that authorize PBGC to assess civil monetary penalties.<sup>1</sup> Section 4302, added to ERISA by the Multiemployer Pension Plan Amendments Act of 1980, authorizes PBGC to assess a civil penalty of up to \$100 a day for failure to provide a notice under subtitle E of title IV of ERISA (dealing with multiemployer plans). Section 4071, added to ERISA by the Omnibus Budget Reconciliation Act of 1987, authorizes PBGC to assess a civil penalty of up to \$1,000 a day for failure to provide a notice or other material information under subtitles A, B, and C of title IV and sections 303(k)(4) and 306(g)(4) of title I of ERISA.

### **Adjustment of Civil Penalties**

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,<sup>2</sup> which requires agencies to adjust civil

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<sup>1</sup> Under the Federal Civil Penalties Inflation Adjustment Act of 1990, a penalty is a civil monetary penalty if (among other things) it is for a specific monetary amount or has a maximum amount specified by Federal law. Title IV also provides (in section 4007) for penalties for late payment of premiums, but those penalties are neither in a specified amount nor subject to a specified maximum amount.

<sup>2</sup> Sec. 701, Public Law 114-74, 129 Stat. 599-601 (Bipartisan Budget Act of 2015).

monetary penalties for inflation and to publish the adjustments in the Federal Register. An initial adjustment was required to be made by interim final rule published by July 1, 2016, and effective by August 1, 2016. Subsequent adjustments must be published by January 15 each year after 2016.

On December 15, 2022, the Office of Management and Budget issued memorandum M-23-05 on implementation of the 2023 annual inflation adjustment pursuant to the 2015 act.<sup>3</sup> The memorandum provides agencies with the cost-of-living adjustment multiplier for 2023, which is based on the Consumer Price Index (CPI-U) for the month of October 2022, not seasonally adjusted. The multiplier for 2023 is 1.07745. The adjusted maximum amounts are \$2,586 for section 4071 penalties and \$345 for section 4302 penalties.

### **Compliance With Regulatory Requirements**

The Office of Management and Budget has determined that this rule is not a “significant regulatory action” under Executive Order 12866 and therefore not subject to its review.

The Office of Management and Budget also has determined that notice and public comment on this final rule are unnecessary because the adjustment of civil penalties implemented in the rule is required by law. See 5 U.S.C. 553(b).

Because no general notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

### **List of Subjects**

*29 CFR Part 4071*

Penalties.

*29 CFR Part 4302*

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<sup>3</sup> See M-23-05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, <https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf>.

Penalties.

In consideration of the foregoing, PBGC amends 29 CFR parts 4071 and 4302 as follows:

**PART 4071 — PENALTIES FOR FAILURE TO PROVIDE CERTAIN NOTICES OR OTHER MATERIAL INFORMATION**

1. The authority citation for part 4071 continues to read as follows:

**Authority:** 28 U.S.C. 2461 note, as amended by sec. 701, Pub. L. 114-74, 129 Stat. 599-601; 29 U.S.C. 1302(b)(3), 1371.

**§ 4071.3 [Amended]**

2. In § 4071.3, remove the number “\$2,400” and add in its place the number “\$2,586”.

**PART 4302 — PENALTIES FOR FAILURE TO PROVIDE CERTAIN MULTIEMPLOYER PLAN NOTICES**

3. The authority citation for part 4302 continues to read as follows:

**Authority:** 28 U.S.C. 2461 note, as amended by sec. 701, Pub. L. 114-74, 129 Stat. 599-601; 29 U.S.C. 1302(b)(3), 1452.

**§ 4302.3 [Amended]**

4. In § 4302.3, remove the number “\$320” and add its place the number “\$345”.

Issued in Washington DC by

**Gordon Hartogensis**

Director

Pension Benefit Guaranty Corporation

[FR Doc. 2023-00499 Filed: 1/11/2023 8:45 am; Publication Date: 1/12/2023]